

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<http://oversight.house.gov>

June 11, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Attorney General:

I am writing in response to a letter sent earlier today from the Department of Justice asking the Committee to postpone its contempt vote against you and Commerce Secretary Wilbur Ross for refusing to comply with the Committee's bipartisan document subpoenas relating to the 2020 Census.

The Department's letter asks the Committee to "hold the subpoenas in abeyance and delay any vote" on holding you and Secretary Ross in contempt of Congress. The purpose of this delay, according to the Department's letter, would be to give President Trump more time to consider whether to assert executive privilege over the documents required by the subpoenas, despite the fact that months have passed since the subpoenas were issued.¹

Unfortunately, the Department's letter makes no commitments to provide any portion of the critical documents required by the subpoenas, and it makes no counter-offer with respect to these documents.

The Department's letter also seems to make a threat: if the Committee proceeds with the contempt vote tomorrow, the Department will recommend that the President "make a protective assertion of executive privilege" over all documents in this investigation, and the Department also will "reevaluate its current production efforts in ongoing matters."²

In other words, without making any recognizable counter-offer with respect to the documents under subpoena, the Department appears to be indicating that it may stop producing

¹ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 11, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-6-11%202020%20Census%20-%20Cummings%20%234205328.pdf>).

² *Id.*

responsive documents over which even the Department concedes no privilege exists—and that the Department may also withhold documents in other investigations.

The Committee cannot accept these terms. The Committee has a responsibility under the Constitution to conduct rigorous oversight of the Census, and we will not continue to delay our efforts due to your ongoing obstruction.

The Department's request for more time to consider executive privilege disregards the multiple, repeated warnings that the Committee would proceed with contempt if the Department of Justice and Department of Commerce continued to withhold the subpoenaed documents.

The Committee's bipartisan subpoenas were issued in April. In addition, the Committee notified you and Secretary Ross eight days ago, on June 3, 2019, "that the Committee is scheduling a vote to hold you in contempt of Congress." The Committee also explained that it would consider postponing the vote if the Department of Justice and Department of Commerce began producing a small subset of high-priority documents.³

On June 6, 2019, both Departments wrote back calling a vote on contempt "premature." However, the Departments failed to produce any of the documents we identified and made no counter-offers or other commitments with respect to these documents.⁴

The Department of Justice's claims that it has "made significant efforts towards accommodation" while the Committee has "failed to abide by the constitutionally mandated accommodation process" are simply inaccurate. Although the Department of Justice and the Department of Commerce have produced thousands of documents, many are heavily redacted, non-responsive, or already public.

In contrast, the Committee has bent over backwards to try to accommodate the Departments' interests. For example, our bipartisan subpoenas covered a much narrower range of documents than the Committee's previous voluntary requests and had a narrower date range. We also identified smaller sets of documents to be produced first. The Departments, however, have failed to comply.

³ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Attorney General William P. Barr, Department of Justice (June 3, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-03.EEC%20to%20Barr-DOJ%20re%20Census.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (June 3, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-06-03.EEC%20to%20Ross-DOC%20re%20Census.pdf>).

⁴ Letter from Stephen E. Boyd, Assistant Attorney General, Department of Justice, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOJ%20to%20COR%2006-06-19.pdf>); Letter from Charles Kolo Rathburn, Performing the Duties of the Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (June 6, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Letter%20from%20DOC%20to%20Chairman%20Cummings%20%5B6-6-2019%5D.pdf>).

Although the Department's letter today makes no discernable counter-offer with respect to the subpoenaed documents—other than giving the President even more time than he has already had to determine whether to assert executive privilege—the Committee's previous offer still stands.

Specifically, the Committee will postpone tomorrow's contempt vote for you if you agree to produce, by tomorrow, unredacted copies of the two documents identified in Item 1 of the subpoena issued to you and all drafts of the Department of Justice's letter to the Department of Commerce on December 12, 2017, which are responsive to Item 2 of that subpoena. Similarly, the Committee will postpone tomorrow's contempt vote for the Secretary of Commerce if he agrees to produce, by tomorrow, unredacted copies of the 11 documents identified in Item 1 of the subpoena to him.

Please let my staff know by 9:00 p.m. whether you will accept this offer.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Wilbur L. Ross, Jr., Secretary
U.S. Department of Commerce